

MEETING MINUTES, BOARD OF ZONING APPEALS, FEBRUARY 12, 2007

Present: Phil Tinkle, Mike Campbell, Shan Rutherford, Ken Knartzer, Raynel Berry – Assistant City Attorney, William Peeples, Senior Planner; and Janice Nix, Recording Secretary

The meeting was called to order at 6:00 p.m. by Shan Rutherford, Vice-Chairman.

PREVIOUS MINUTES

December 11th – Asst. City Attorney Berry noted one correction to page 5, concerning the condition for the 70' half right of way along Graham Rd., recommending a motion to correct the proposed minutes to add the following words to the end of the sentence "upon recording of secondary plat." Knartzer moved to amend the minutes with that correction, seconded by Tinkle. Vote for **approval** was unanimous, 4-0. **Motion carried.** Knartzer moved to accept the minutes as amended, seconded by Tinkle. Vote for **approval** was unanimous, 4-0. **Motion carried.**

January 8th – Tinkle noted that board member Knartzer was present; however, his name was omitted from the attendance in the minutes. Also, Asst. City Attorney should be added to end of Raynel Berry's name. Tinkle moved to amend the minutes with those corrections, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.** Knartzer moved to accept the minutes as amended, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

NEW BUSINESS

Docket V2007-01 – Dimensional Variance (Sign Code) – Vitamin Shop – 1230 N. U.S. 31 – request to allow additional wall signs on the west and north sides of the building – Schottenstein Stores Corp., owner; Nancy Long, A-1 Expeditors, Inc., representing.

Nancy Long, A-1 Expeditors, came forward and was sworn. The request is for two variances.

The first variance request is for an additional 56.43 square foot wall sign on the northern façade of an existing building. Long addressed the statutory criteria in regard to this variance request as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The Vitamin Shop has retail stores nationwide with signs depicting the store name on all four sides of the retail store with no public concerns at all. The request seeks to incorporate additional wall signage on the northern façade to attract southbound traffic from United States Highway 31. Since the design of the commercial subdivision precludes access to this property, it is unlikely that this request would materially affect the safety of the traveling public on U.S. 31 or the health, safety, morals and general welfare of the community.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** There are retail businesses completely surrounding this store. This property is located within an intensive commercial area along US 31, so the addition of one additional 56 square foot sign oriented toward one travel lane of a high capacity arterial will not be noticeable.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** This building is in the middle of a parking lot. The front of the building is a heavily traveled road that is extremely busy most of the day. Drivers traveling south would have a hard time locating the store without a sign on the north façade. If a person was shopping in the strip mall, they would be looking at the back of the store. There needs to be an identifier depicting the store name for those shoppers. The Ordinance provides for wall signage only on the front facades of a building and does not acknowledge side facades that have an orientation to a high capacity arterial such as US 31. The inclusion of this small sign on the northern façade would aid in the identification of the use from the southbound traffic of US 31.

Campbell stated he feels the sign to be located on the north side of the building would be hard to see from the highway.

Knartzer moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Knartzer moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to locate a sign on the north side of building located at the Vitamin Shop, 1230 N. U.S. 31, in that the approval

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report;
- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.

Seconded by Tinkle. Vote for **approval** was 3 for, 1 against (Campbell). **Motion carried.**

The second variance request is for an additional 127.04 square foot wall sign on the western façade of an existing building. Long addressed the statutory criteria in regard to this variance request as follows:

- 1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The Vitamin Shop has retail stores nationwide with signs depicting the store name on all four sides of the retail store with no public concerns at all.
- 2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** There are retail businesses completely surrounding this store. This property is located within an intensive commercial area along US 31, so the addition of one additional 56 square foot sign oriented toward one travel lane of a high capacity arterial will not be noticeable.
- 3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** This building is in the middle of a parking lot. The front of the building is a heavily traveled road that is extremely busy most of the day. Drivers traveling south would have a hard time locating the store without a sign on the north façade. If a person was shopping in the strip mall, they would be looking at the back of the store. There needs to be an identifier depicting the store name for those shoppers.

Tinkle stated he feels the additional sign on the west façade is not needed, with signs being located on the other three sides.

Knartzer moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Tinkle. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Campbell moved that based on the evidence presented that the Board **deny** the granting of a dimensional variance to locate a sign on the west side of building located at 1230 N. U.S. 31, in that the approval

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report;
- C. The strict application of the terms of the zoning ordinance will **not** result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.

Seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Knartzer moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving the sign on the north side, denying the sign on the west side, Variance Petition Number V2007-001, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Tinkle. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Docket V2007-02 – Dimensional Variance (Sign Code) – Greenwood Oaks Apartments – corner of Polk St. & Smith Valley Rd. – request to allow a second existing two-sided, permanent multi-family project identity sign, request to permit the second sign to be erected with a zero-foot setback from the right of way, and a request to allow the sign to be higher than 4' – Ohio Properties, owner; Van Valer Law Firm, representing.

Brandi Foster, Van Valer Law Firm; and Nick Kirkendall; Ohio Properties; came forward and were sworn. The apartments have existed since the mid 1980's. Foster stated that the additional sign is needed for added identification for traveling motorists. Foster addressed the statutory criteria for the first variance request to legally establish a second, existing, two-sided, permanent multi-family project identity sign as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The requested variance will permit use of the existing sign location, which has been in existence since before Petitioner's purchased said real estate in the year 2000, to remain in place. There has been no indication that the existing sign or its location has negatively affected the public health, safety, morals or general welfare of the community. In fact, due to the location of the real estate entrance, located at the curve of Smith Valley bypass, the sign would appear to enhance the general safety of the community by providing advance notification of the entrance to the real estate, subsequently avoiding traffic problems which may result from sudden braking and/or turning at the last minute. The existing sign is located near the intersection of Polk Street and Smith Valley Road, while the second multi-family project sign is located at the intersection of the main entrance to the project with Polk Street. The existence of a second project sign, in and of itself, does not pose a risk to the public health, safety, morals or general welfare of the community.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** As previously noted, the existing sign has been in place prior to the Petitioner's purchase of the real estate in the year 2000. There has been no indication that the identification sign has negatively affected any of the adjacent property or flow of traffic. Furthermore, the requested variance will not be altered in any manner which would increase the sign's intensity. The sign is well-maintained and attractive; therefore it does not constitute a blighting influence on other multi-family, single family and industrial land uses in the general area.

3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The problem peculiar to the real estate in this case is the location of the entrance to the real estate. The real estate is adjacent to Smith Valley Road, located on the slope of the curve, however the project entrance is located on Polk Street. Neither the project nor its entrance is visible from Smith Valley Road, which causes difficulty. The existing sign has allowed for visibility of the project on premises. The existing sign has acted as a source of identification for said project and is essential to the viability of the project.

Knartzter moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Knartzter moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to allow an additional identification sign located at Greenwood Oaks Apts., in that the approval

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report;
- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

Seconded by Campbell. Vote for **approval** was 3 for, 1 against (Tinkle). **Motion carried.**

Discussion of setback request was next. Attorney Foster stated the sign has been moved since the variance was filed and now sets within the setback requirements. Discussion ensued about providing documentation to that effect. Foster requested to be allowed to withdraw this variance request as it was no longer necessary. Rutherford stated that the Board would allow this variance request to be withdrawn at this time. However, if it is found that the sign is not in compliance, a new variance will need to be filed.

Attorney Foster then addressed the statutory criteria for the request to legally establish a second, existing, two-sided permanent, multi-family project identity sign with a height of eight feet. She presented a photo of the sign into evidence which depicted two additional flags erected on top of the sign. She addressed the statutory criteria in regard to this variance as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The requested variance will permit use of the existing sign location, which has been in existence since before Petitioner's purchased said real estate in the year 2000, to remain in place. There has been no indication that the existing sign or its location has negatively affected the public health, safety, morals or general welfare of the community. In fact, due to the location of the real estate entrance, located at the curve of Smith Valley bypass, the sign would appear to enhance the general safety of the community by providing advance notification of the entrance to the real estate, subsequently avoiding traffic problems which may result from sudden braking and/or turning at the last minute. The height of the sign does not create a barrier to the view of traffic along the street frontages affected.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** As previously noted, the existing sign has been in place prior to the Petitioner's purchase of the real estate

in the year 2000. There has been no indication that the identification sign has negatively affected any of the adjacent property or flow of traffic. Furthermore, the requested variance will not be altered in any manner which would increase the sign's intensity. The sign is well-maintained and attractive; therefore it does not constitute a blighting influence on other multi-family, single family and industrial land uses in the general area. There is a negligible difference on the affect on the use and value of area adjacent to the property included in the variance between a sign constructed at a four-foot height and the effect at the current height of eight feet.

3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The problem peculiar to the real estate in this case is the location of the entrance to the real estate. The real estate is adjacent to Smith Valley Road, located on the slope of the curve, however the project entrance is located on Polk Street. Neither the project nor its entrance is visible from Smith Valley Road, which causes difficulty. The existing sign has allowed for visibility of the project on premises. The existing sign has acted as a source of identification for said project and is essential to the viability of the project.

Knartzer stated that he felt that the practical difficulty criteria is not met to warrant allowing the sign to be higher than 4'.

Knartzer moved to admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Tinkle. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Campbell moved that based on the evidence presented that the Board **deny** the granting of a dimensional variance to allow ground sign taller than 4' located at Greenwood Oaks Apts., in that the strict application of the terms of the zoning ordinance will not result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.

Seconded by Tinkle. Vote for **approval of motion to deny** was unanimous, 4-0. **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving the additional sign/denying the allowance of a height taller than 4', Variance Petition Number V2007-002, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Tinkle. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Docket V2007-03 – Dimensional Variance (Sign Code) – Park 1401 – 1401 W. County Line Rd. – request to legally establish a pylon sign in a B-1 Business Zoning District, and a request to legally establish a pylon sign with a bottom 2.5 feet from the existing lot grade, therefore allowing the sign to measure 25' in height (from top of sign to grade) – Edward Garry Leasing, LLC, owner; Hutchison Sign Co., representing.

Gordon Harper, Attorney for Hutchison Signs, came forward and was sworn. The request is to allow a pole sign in a B-1 zoning district. The size of the sign is needed due to the number of tenants who will be located within the office complex and will need to advertise on the sign. Harper addressed the statutory criteria in regard to this request as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The property is zoned for business purposes

and the owner has constructed an office building for sixteen (16) tenants and the sign will provide the necessary advertisement and information necessary for both the tenants and their customers. The sign is located 55 feet back from the right of way and 160 feet from the nearest residential property. It will be obscured from those districts by the proposed buildings under construction.

2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The sign will set substantially back from the adjacent properties with no adverse affect on any of the adjacent properties. It is basically isolated from residential properties. The adjacent properties to the east and west are both zoned business, thereby this sign causes no negative impact to those properties.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** A reasonable size sign is necessary for a business property and the building on this property has numerous businesses that need to provide information and advertisement for the general public. Further, a hardship would be caused the owner of the property if the sign cannot be raised from the grade because the last two (2) tenants would not be visible and requiring construction of the sign at grade will present numerous maintenance and site-line problems.

Rutherford opened the floor for additional input and comment. Harold Durham, 1144 Rosengarten Dr., Grwd., came forward and was sworn. His home is located behind the development. He stated he is concerned about the proposed size of the sign. Lighting of the sign is also a concern, in addition to the lighting that is already located at the project.

Gordon Harper offered rebuttal. He stated that the residential properties located behind the development are buffered from the sign, by the size and location of the buildings under construction. The sign will not be lit from the outside. The panels on the sign will be dark and only the letters on the sign will be illuminated from within.

Knartzer moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Tinkle. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Tinkle moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to allow a pole sign in a B-1 district located 1401 W. County Line Rd., in that the approval

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report;
- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.

Tinkle made the motion subject to the condition that the sign panels shall be of a dark color with light letters. Seconded by Knartzer. Vote for **approval** was 3 for, 1 against (Campbell). **Motion carried.**

The second variance request was to allow a pole sign with a bottom 2.5 feet from the existing lot grade. The total height of the sign would be 25'. Harper addressed the statutory criteria as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The provisions requiring a separation between the grade and bottom of the sign is intended to improve visibility under the sign for oncoming traffic; however this sign would be set back significantly more than the minimum required by the Ordinance. This enhanced setback serves as a solution to meet the intent of the Ordinance. The setback ensures that the public health, safety, morals and general welfare of the community will not be injured by the location of the bottom of the sign 2.5 feet from the existing lot grade, in that visibility under the sign is not an issue.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The sign will be set substantially back from the adjacent properties with no adverse affect on any of the adjacent properties. Sign location will be 55 feet from the right-of-way of County Line Road and approximately 160 feet from any adjacent residential district and obscured from those districts by the proposed buildings under construction. It is basically isolated from residential properties. The adjacent properties to the east and west are both zoned business, thereby this sign causes no negative impact to those properties.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** This sign is necessary for this business property and the building on this property has numerous businesses that need to provide information and advertisement for the general public. Further, a hardship would be caused the owner of the property if the sign cannot be raised from the grade because the last two (2) tenants would not be visible and requiring construction of the sign at grade will present numerous maintenance and site-line problems. The sign would serve as identification for approximately 16 businesses in this commercial development and maintaining the grade separation and providing appropriate space for 16 tenants would result in a sign with excessive height.

Tinkle inquired if at time of site plan approval if landscaping required around proposed sign. Senior Planner Bill Peeples stated he was not aware of any. Tinkle suggested a condition for approval regarding working with the Planning Staff for landscape guidelines. He would also like to see a condition regarding the color of the sign and the lettering.

Ron Bates, 1272 Rosengarten Dr., Grwd, came forward and was sworn. He was under the impression that the sign would only be 22' from top of sign to grade. He stated he thought a revised plan had been submitted by the petitioner that showed the sign only 22' in height.

Gordon Harper came forward for rebuttal. He was never apprised that there was any agreement to hold the sign to only 22' from top of sign to grade level. His client would like to have the sign be a total height of 25'.

Harold Durham came forward once again. He pointed out other developments within the area that have signs at grade level. He also stated that the petitioners have installed a landscape berm along the front of the property. This is probably why the sign would need to be elevated. He suggested taking out the landscape berm.

Tinkle pointed out that the properties mentioned above are in Marion County, and therefore out of Greenwood's jurisdiction. Also, the landscape berm was installed as a requirement of the site plan.

Rutherford closed the public hearing. Knartzer moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all

other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Tinkle moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to allow 2 ½ ft. clearance from bottom of the sign to the ground located at 1401 W. County Line Rd., in that the approval

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report;
- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.

With the following conditions:

- 1) Sign color shall be of a dark coloring with light colored lettering.
- 2) Petitioner shall work with Planning Staff and obtain their approval of an acceptable landscape plan surrounding the sign.
- 3) Any exterior illumination shall be directed toward the sign.

Seconded by Knartzer. Vote for **approval** was 3 for, 1 against (Campbell). **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2007-003, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Tinkle. Vote for **approval** was unanimous, 4-0. **Motion carried.**

ANNOUNCEMENTS/REPORTS

Knartzer moved to adjourn, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.** Meeting was adjourned 7:25 p.m.

JANICE NIX
Recording Secretary

SHAN RUTHERFORD
Vice Chairman